Aspen Hills, Inc., d/b/a Aspen Hills of Halls Ferry *and* Local 50, Service Employees International Union, AFL–CIO, CLC. Case 14–CA–23174

November 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by Local 50, Service Employees International Union, AFL–CIO, CLC (the Union), on August 10, 1994, and an amended charge filed by the Union on September 19, 1994, the General Counsel of the National Labor Relations Board issued a complaint on September 23, 1994, against Aspen Hills, Inc., d/b/a Aspen Hills of Halls Ferry (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer.

On October 27, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On November 1, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 12, 1994, notified the Respondent that unless an answer were received by October 17, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Missouri corporation with an office and place of business in Saint Louis, Missouri, has been engaged in the operation of a nursing home providing medical care. During the 12-month period ending August 31, 1994, the Respondent, in conducting its business operations, derived gross revenues in excess of $100,000 and purchased and received at its Saint Louis, Missouri facility goods valued in excess of $5000 directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed as nurses' aides, activity aides, dietary aides, certified medical technicians, laundry aides, restorative aides, housekeepers and maintenance workers employed by the Employer at its St. Louis, Missouri facility, excluding office clerical employees, guards and supervisors as defined in the Act.

In about 1969, the Union was certified as the exclusive collective-bargaining representative of the unit by a predecessor of the Respondent. Since about 1969, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since about October 1, 1993, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from October 1, 1993, through December 31, 1994. From about 1969 to October 1, 1993, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employed by predecessor employers including Blackjack #1, d/b/a Halls Ferry Memorial Nursing Center. At all times since about October 1, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's unit employees.

The collective-bargaining agreement described above provides in article 2, section 7, that the Respondent shall deduct union dues from employees who voluntarily execute written authorizations for payment by the Respondent to the Union; provides in article 10 that the Respondent will make health insurance payments; and provides in article 11 that the Respondent will make pension payments.

Since about March through May 1994, the Respondent has failed and refused to make the health insurance and pension payments, and since about April through May 1994, to deduct the union dues. These subjects re-

late to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union, without affording the Union an opportunity to bargain with respect to this conduct, and without the consent of the Union.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since April through May 1994 to deduct union dues for employees who had executed dues-checkoff authorizations, we shall order the Respondent to deduct and remit union dues as required by the agreement and to reimburse the Union for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since March through May 1994 to make contractually required health insurance payments for its unit employees, we shall order the Respondent to restore the employees' health insurance coverage and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra. Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since March through May 1994 to make contractually required pension payments, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, supra, such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Aspen Hills, Inc., d/b/a Aspen Hills of Halls Ferry, Saint Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL–CIO, CLC, by failing and refusing to make the contractually required health insurance and pension payments for the unit employees and by failing and refusing to deduct union dues from employees who voluntarily execute written authorizations for payment to the Union, as provided for in the collective-bargaining agreement. The following employees are included in the unit:

> All employees employed as nurses' aides, activity aides, dietary aides, certified medical technicians, laundry aides, restorative aides, housekeepers and maintenance workers employed by the Employer at its St. Louis, Missouri facility, excluding office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the terms of the collective-bargaining agreement with the Union, effective from October 1, 1993, through December 31, 1994.

(b) Make whole the unit employees by making the health insurance payments and the pension payments for the period March through May 1994, as required by the collective-bargaining agreement, and by reimbursing employees for any expenses ensuing from the failure to make the required payments, in the manner set forth in the remedy section of this decision.

(c) Make the Union whole for any losses resulting from the Respondent's failure to deduct and remit union dues for the period April through May 1994, as set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 29, 1994

William B. Gould IV,	Chairman
James M. Stephens,	Member
Margaret A. Browning,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively and in good faith with Local 50, Service Employees International Union, AFL–CIO, CLC, by failing or refusing to make the contractually required health insurance and pension payments for our unit employees or by failing and refusing to deduct union dues from employees who voluntarily execute written authorizations for payment to the Union, as provided for in the collective-bargaining agreement. The following employees are included in the unit:

> All employees employed as nurses' aides, activity aides, dietary aides, certified medical technicians, laundry aides, restorative aides, housekeepers and maintenance workers employed by us at our St. Louis, Missouri facility, excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the collective-bargaining agreement with the Union, effective from October 1, 1993, through December 31, 1994.

WE WILL make whole our unit employees by making the health insurance payments and the pension payments for the period March through May 1994, as required by the collective-bargaining agreement, and by reimbursing employees for any expenses ensuing from the failure to make the required payments, in the manner set forth in the remedy section of this decision.

WE WILL make the Union whole for any losses resulting from our failure to deduct and remit union dues for the period April through May 1994, as set forth in the remedy section of this decision.

ASPEN HILLS, INC., D/B/A ASPEN HILLS OF HALLS FERRY

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."